



November 30, 2001

Ms. Cynthia B. Garcia
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2001-5567

Dear Ms. Garcia:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 155477.

The City of Fort Worth (the "city") received a request for the following information:

Any or all written correspondence (e-mails, letters, memos, etc.) between representatives of the FPA and MPA Foundations, and/or Ed Bass, Anne Marion, and Peter Arendt, and city council members, department heads and the city manager's office, regarding the proposed roundabout at the six-point intersection of Camp Bowie Boulevard, University Drive, W. Seventh Street.

You claim that the requested information is excepted from disclosure under section 552.105 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that a portion of the submitted materials includes information made public by section 552.022 of the Government Code. This section provides several categories of information that are not excepted from required disclosure unless they "are expressly confidential under other law." In pertinent part this section reads

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are

public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body;

...

(5) all working papers, research material, and information used to estimate the need for or expenditure of public funds or taxes by a governmental body, on completion of the estimate[.]

Gov't Code §552.022(a)(3), (5). The submitted materials include information contained in a contract and information used to estimate the need for or expenditure of public funds by a governmental body. The contract is subject to required release under section 552.022(a)(3) unless expressly confidential under other law, while the information used to estimate the need for or expenditure of public funds may fall within the scope of subsection (a)(5). Presuming that the estimates associated with the documents that may fall within the scope of subsection (a)(5) are completed estimates, such documents must be released except to the extent that they are expressly confidential under other law.

Section 552.105 is a discretionary exception and is not "other law" for the purpose of section 552.022. Open Records Decision No. 564 (1990) (governmental body may waive statutory predecessor to section 552.105). Consequently, we find that you must release the marked contract and the remaining marked documents if the estimates associated with the remaining marked documents have been completed.

With respect to the remainder of the submitted information, and to any of the documents marked for release pursuant to section 552.022(a)(5) for which the estimates are not completed, we address your argument under section 552.105 of the Government Code. Section 552.105 excepts from required public disclosure information relating to "(1) the location of real or personal property for a public purpose prior to public announcement of the project" as well as "(2) appraisals or purchase price of real or personal property for a public purpose prior to the formal award of contracts for the property." Section 552.105 protects a governmental body's planning and negotiating position with respect to particular transactions. *See* Open Records Decision No. 564 at 2 (1990). This exception protects information relating to the location, appraisal, and purchase price of property, until the transaction is either completed or canceled. *See* Open Records Decision Nos. 357 at 3 (1982), 310 at 2 (1982). A governmental body may withhold information the release of which would impair or tend to impair the governmental body's "planning and negotiating position in regard to particular transactions." Open Records Decision No. 222 (1979). The question of whether specific information, if publicly released, would impair a

governmental body's planning and negotiation position in regard to particular transactions is a question of fact. Accordingly, this office will accept a governmental body's good faith determination in this regard, unless the contrary is clearly shown as a matter of law. *See* Open Records Decision No. 564 (1990).

You inform us that the submitted information relates to the location and purchase price of real property that the city will acquire once the final project design has been adopted. You indicate that the release of the submitted documents could "hamper the City's ability to acquire property to complete the design," and "could also cause the cost of the property to increase." Finally, you indicate that the transaction involving the property at issue has not yet been completed. Based on your arguments and our review of the information at issue, we agree that, with the exception of the marked information that is under the purview of section 552.022, the submitted information is excepted from disclosure under section 552.105 of the Government Code and therefore may be withheld.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

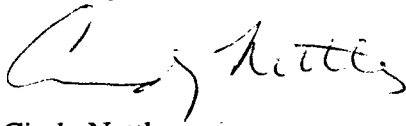
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Cindy Nettles", written over a horizontal line.

Cindy Nettles
Assistant Attorney General
Open Records Division

CN/seg

Ref: ID# 155477

Enc. Submitted documents

c: Ms. Anna Tinsley
Star Telegram
400 West 7th Street
Fort Worth, Texas 76102
(w/o enclosures)